

MISSOURI COURT OF APPEALS WESTERN DISTRICT

DEVELOPER SERVICES CORPORATION,

Appellant-Respondent,

v.

TRIPLE J. CONSTRUCTION, INC., et al, Respondents, BAZIN EXCAVATING, INC.,

Respondent-Appellant.

DOCKET NUMBER WD75051 Consolidated with WD75081

Date: April 8, 2014

Appeal from:

Platte County Circuit Court

The Honorable Owens L. Hull, Jr., Judge

Appellate Judges:

Division Four: James E. Welsh, C.J., Presiding, Alok Ahuja, J. and Edith Messina, Sp. J.

Attorneys:

Margaret D. Lineberry, Kansas City, MO, for appellant.

Randall Willbanks, Respondent Pro Se, and Green Hills Estates, Respondent Pro Se, James D. Lawrence, Thomas E. Nanney, Norman E. Beal, Deron A. Anliker, Megan A. Scheiderer and David B. Raymond, Mandierene Hunter, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

COURT OF APPEALS -- WESTERN DISTRICT

DEVELOPER SERVICES CORPORATION

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v.

TRIPLE J. CONSTRUCTION, INC., et al, Respondents, BAZIN EXCAVATING, INC.,

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Platte County

This appeal involves the priority of various liens against a large tract of property in Platte County. Triple J Construction, Inc. purchased the property, comprising approximately 248 acres, in October 2004.

In January 2005, Developer Services Corporation (“DSC”) entered into an “Exclusive Subdivision Property Listing and Agreement” with Triple J, which gave DSC the right to serve as the exclusive broker for the property, and to collect commissions on the sale of parcels of the property. DSC claims that various commissions owed to it have not been paid; it claims that it is entitled to a lien on the property to secure the payment of those commissions.

In June 2005, Bazin Excavating entered into an oral agreement with Triple J to perform work and supply labor and materials for the construction and improvement of the subdivision. Triple J stopped paying monthly invoices submitted by Bazin in April of 2006. Bazin, however, continued to perform work on the property through 2008. On August 20, 2008, Bazin filed a mechanic’s lien statement in the Circuit Court of Platte County, asserting a lien on the property for its unpaid invoices.

The circuit court determined that DSC’s claimed broker’s lien, and Bazin’s claimed mechanic’s lien, were both unenforceable. DSC and Bazin appeal.

AFFIRMED.

Division Four holds:

DSC’s claim to a contractual broker’s lien fails. In order to impress real property with a lien to secure the payment of a debt based on an agreement, a clear intention to impose a lien must be expressed. In this case, the documents on which DSC relies do not contain a clear indication that Triple J agreed to grant DSC a lien against any of the property, or against the

proceeds of any sale of that property, to secure DSC's right to collect its broker's commissions. The various agreements establish DSC's right to compensation, and make clear that DSC's compensation rights accrue at the time a parcel of property is sold. The fact that the agreements establish a monetary obligation owing to DSC, and were designed to fix the ultimate time for payment to DSC, is not sufficient to establish a lien in specific property to secure that payment obligation.

Bazin's mechanic's lien claim fails due to its failure to comply with the notice requirements in § 429.012.1. Section 429.012 requires "[e]very original contractor" to provide a written notice to the property owner, or to the person with whom the contractor contracted, "prior to receiving payment in any form of any kind from such person." Bazin concedes that it did not provide the notice required by § 429.012.1. It contends, however, that it is not an "original contractor" subject to § 429.012.1. We disagree. To be an "original contractor," all that is required is that the lien claimant contract with the owner of the property. Here, Triple J owned a substantial portion of the property at the time Bazin contracted to perform work on the property, and Bazin was therefore an "original contractor." The fact that Triple J was acting as its own general contractor, and was familiar with lien practice even without the notice required by § 429.012.1, is irrelevant. In addition, although Bazin argues that a mechanic's lien can still be upheld as to the portion of the property Triple J did not own (and on which Bazin was therefore not an "original contractor"), Bazin is not entitled to partial enforcement of its lien, because it performed work on both the part of the property Triple J owned, and the part Triple J did not own, and provided the trial court with no basis to distinguish the value of the work performed on particular parts of the property.

Before: Division Four: James E. Welsh, C.J., Presiding, Alok Ahuja, J. and Edith Messina, Sp. J.

Opinion by: Alok Ahuja, Judge

April 8, 2014

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